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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SABRINA SOURI, et al.,

Plaintiffs and Appellant,

v.

KOVAC MEDIA GROUP, INC., et al.,

Defendants and Respondents.

B208253

(Los Angeles County
Super. Ct. No. BC378456)

APPEAL from an order of the Superior Court of Los Angeles County, Malcolm Mackey, Judge. Reversed.

Mesisca, Riley & Kreitenberg, Dennis P. Riley, Rena E. Kreitenberg, Mike N. Vo, Patrick Mesisca, for Plaintiff and Appellant Marina Mena.

Hinshaw & Culbertson, Filomena E. Meyer, Desmond J. Hinds, for Defendants and Respondents Leader Kozmor Gorham, and James D. Kozmor.

Miller Barondess, Louis R. Miller, Mira Hashmall, Daniel S. Miller, for Defendant and Respondent Kovac Media Group, Inc.

INTRODUCTION

After reversing a trial court order under the anti-SLAPP statute, Code of Civil Procedure section 425.16, striking a cause of action, we also reverse the order awarding attorney fees and costs.

BACKGROUND

Plaintiff and appellant Marina Mena filed a complaint against Kovac Media Group, Inc., doing business as 10th Street Entertainment (Kovac Media) and others alleging various employment-related causes of action. The complaint also alleges a cause of action for intentional infliction of emotional distress by Mena against Kovac Media, Leader Kozmor Gorham LLP and James D. Kozmor (Kozmor) (together, the Leader Kozmor defendants), and a cause of action for malicious prosecution by Mena against Kovac Media and the Leader Kozmor defendants. Mena's malicious prosecution cause of action and part of Mena's intentional infliction of emotional distress cause of action are based on a prior action filed by the Leader Kozmor defendants on behalf of Kovac Media against Mena.

The Leader Kozmor defendants filed a motion to strike Mena's causes of action for intentional infliction of emotional distress and malicious prosecution under the anti-SLAPP statute—Code of Civil Procedure section 425.16. Kovac Media joined the Leader Kozmor defendants' motion.

The trial court granted the motions and awarded attorney fees and costs. Mena appealed with respect to the malicious prosecution action. She did not challenge the ruling as to the intentional infliction of emotional distress injury claim, to the extent it related to the underlying action. Her appeal was directed solely to the malicious prosecution cause of action. We reversed. Mena has filed a separate appeal with regard to attorney fees and costs.

In her briefs Mena only challenged the fee award based on the inadequacy of the supporting evidence. After the reversal of the appeal on the order granting the motion to strike, Mena, in a letter brief, suggests that the order granting attorney fees and costs be reversed. The Leader Kozmor defendants were given permission to file a letter brief and requested that the court dismiss the appeal as moot and remand the matter to the trial court for a determination of the amount of the fees and costs to be awarded them on Mena's stricken cause of action for intentional infliction of emotional distress.

DISCUSSION

When an order granting an anti-SLAPP motion to strike is reversed, the order awarding fees and costs must also be reversed. (*Santa Monica Rent Control Bd. V. Pearl Street, LLC* (2003) 109 Cal.App.4th 1308, 1320.) As the Leader Kozmor defendants were successful in having the intentional infliction of emotional distress claim stricken, it is up to the trial court to determine, in its discretion, if any fees and costs should be awarded. (See *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 340 ["a party who partially prevails on anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. The determination whether a party prevailed on an anti-SLAPP motion lies within the broad discretion of a trial court"].)

Mena argues that the amount attributable to the striking of the intentional infliction of emotional distress cause of action is de minimus, and therefore the matter should simply be reversed. Nevertheless, the trial court should determine in its discretion whether there was a prevailing party and the amount, if any, to award in attorney fees and costs. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321 [amount left to discretion of the trial court].)

Accordingly, we reverse the order granting attorney fees and costs and remand the matter to the trial court to determine if any award of attorney fees or costs should be made and the amount, if any.

DISPOSITION

The order awarding attorney fees and costs is reversed, and the matter is remanded to the trial court. Mena is awarded her costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.